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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DEAN STANDISH PERKINS, JR., et al.,

9 Plaintiffs,

10 v.

11 WESTPORT INSURANCE COMPANY, a
foreign corporation,

12 Defendant.

13 WESTPORT INSURANCE COMPANY, a
14 foreign corporation,

15 Counterclaimant,

16 v.

17 DEAN STANDISH PERKINS, JR., et al.,

18 Counterdefendants.

CASE NO. C07-1671RSM

ORDER DIRECTING FILING OF A
STATEMENT OF STIPULATED
FACTS PURSUANT TO RCW
2.06.010(4)(A)

19 This matter is now before the Court for consideration of the parties' motions for summary
20 judgment and partial summary judgment. After consideration of arguments presented at the hearing on
21 July 16, 2008, the Court has determined that it shall request further clarification from the Washington
22 Supreme Court, pursuant to RCW 2.60.020, on the reach of RCW 48.18.320. As noted by plaintiff, the
23 Washington Supreme Court previously ruled, in a case certified from the Ninth Circuit Court of Appeals,
24 that this statute applies to both "claims made" and "occurrence-based" insurance policies. *American*
25 *Continental Insurance Co. v. Steen*, 151 Wash. 2d 512 (2004). In so finding, the court stated,

26 The statute is clear on its face and applicable to all insurance contracts. This includes claims-
27 made policies. Accordingly, we hold RCW 48.18.320 prohibits and voids any agreement between
an insured and insurer to retroactively cancel or rescind an insurance policy to the
extent that it is made after the occurrence of the peril insured against.

28 *Id.* at 522.

1 The question presented by defendant's summary judgment motion is whether the language
2 regarding applicability to "all insurance contracts" includes professional liability policies which do not
3 directly insure against loss or damage through legal liability for bodily injury, property damage or death.
4 This Court has ruled previously that it does not. *See, Koch v. Travelers Casualty and Surety Company*
5 *of America*, C05-842RSM, Dkt. # 29. The *Steen* court left this possibility open when it stated that the
6 "plain language of the statute focuses on events for which the *insured* is legally liable . . ." *Steen*, 151
7 Wash. 2d at 523 (emphasis in original). Here, plaintiff, as the insured, may be legally liable for the
8 dismissal of his client's product liability claims on statute of limitation grounds, but he is not legally liable
9 for the underlying bodily injury. Therefore, it may be too broad a reading of *Steen* to find that the
10 language regarding applicability to **all** insurance contracts includes professional liability policies which do
11 not insure against bodily injury, property damage, or death. This Court now finds that the most prudent
12 course is to ask the Washington Supreme Court to decide this issue. Pursuant to RCW 2.60.030(1), the
13 Court shall invoke the certification procedure on its own motion.

14 Accordingly, pursuant to RCW 2.60.010(4)(a), the Court directs the parties to prepare a joint
15 stipulation of facts showing the nature of the case and the circumstances out of which the question of law
16 arises, upon which the Washington Supreme Court may rely in its consideration of the matter. They shall
17 also submit, if possible, a joint statement of the question or questions of local law to be certified, pursuant
18 to RCW 2.60.010(4)(b). Such stipulation and statement shall be filed by August 15, 2008. In the event
19 the parties are unable to agree on a joint statement of facts or of the question to be certified, they may
20 submit separate statements from which the Court will draw in putting together a statement of facts and
21 questions.

22 The Court shall defer a ruling on defendant's motion for summary judgment (Dkt. # 29) pending a
23 decision by the Washington Supreme Court, and it shall be taken off the calendar. This deferral does not
24 affect the status of plaintiff's motion for partial summary judgment as to the duty to defend (Dkt. # 25),
25 and the Court shall proceed with a ruling on that motion.

26 DATED this 22 Day of July 2008.

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28 RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE